



September 5, 2001

Ms. Ann-Marie P. Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2001-3941

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151544.

The Travis County District Attorney's Office (the "district attorney") received a request for "[a]ny and all documents in the possession of the [district attorney] pertaining to the arrest, investigation, and prosecution of" a named individual. You state that you are releasing public court records contained within the district attorney's file. You claim, however, that the remaining submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.<sup>1</sup>

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

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<sup>1</sup>We note that one document among the submitted information, which we have marked with a blue tag, does not appear to be responsive to the request. Therefore, this ruling does not address whether the claimed exceptions to disclosure apply to except this document from disclosure.

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You cite to sections 552.108(a)(3) and 552.108(b)(3), and in connection with your assertion of attorney work product, you argue that because the request essentially seeks the district attorney's entire criminal case file, the information is excepted from disclosure in its entirety pursuant to the holding in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because decision of what to include in file necessarily reveals prosecutor's mental impressions or legal reasoning). In this instance, we agree that the records request encompasses the prosecutor's entire case file. *Curry* thus provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, except as otherwise noted herein, the district attorney may withhold the prosecution file pursuant to section 552.108(a)(3)(B) and (b)(3)(B) of the Government Code.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*

*Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). However, because the submitted documents contain information about an alleged sexual assault, certain front page offense report information may be excepted from disclosure under section 552.101 of the Government Code. In sexual assault cases, section 552.101 excepts from public disclosure certain information that is not normally excepted under section 552.108. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information must be withheld on the basis of common law privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. However, here you inform us that the requestor is an attorney who represents the victim. Thus, if the requestor is the victim's authorized representative, the victim-identifying information must be released to the requestor pursuant to section 552.023(a). Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest.<sup>2</sup>

We further note that the submitted documents contain an arrest warrant affidavit. Documents filed with a court are public documents and must be released. See Gov't Code § 552.022(a)(17) (providing that information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Although a notation on this document from the district attorney states "no indication affidavit was filed w/ court," the affidavit does in fact appear to be signed by a magistrate of the Municipal Court of the City of Austin, and does appear to have been filed with the court. Therefore, we conclude the affidavit, which we have marked, must be released in its entirety.

To summarize, the district attorney must release the submitted arrest warrant affidavit, as well as basic information. The remainder of the submitted information may be withheld from the requestor pursuant to section 552.108(a)(3). As we resolve your request under section 552.108, we need not address your other arguments under sections 552.101 and 552.130.

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<sup>2</sup>Because the information to be released under section 552.023 is confidential with respect to the general public, if the district attorney receives a future request for this information from an individual other than the requestor or her authorized representative, the commission should again seek our decision.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 151544

Enc. Submitted documents

c: Mr. Jay R. Beatty  
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(w/o enclosures)